

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

January 11, 2005

Vice-Chairman R. Hilt called the meeting to order at 4:04 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, R. Hilt, E. Fordham, J. Clingman-Scott, B. Larson

MEMBERS ABSENT: S. Schiller, excused; R. Schweifler

STAFF PRESENT: M. Cameron, H. Griffith

OTHERS PRESENT: B. Delello, Re/Max; M. Regeczi, 1440 Lakeshore.

APPROVAL OF MINUTES

B. Larson asked why R. Hilt's name wasn't listed on how he had voted. H. Griffith stated that when a motion is made, the only names that would be listed would be those in opposition of the motion.

A motion that the minutes of the regular meeting of December 14, 2004 be approved, was made by B. Larson, supported by E. Fordham and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2005-001: Request for a use variance request to allow a two-family residential use at 720 Hill Avenue in an R-1 Single-Family Residential Zone, by Barbara Delello (Re/Max Associates). M. Cameron presented the staff report. The subject property was registered as a nonconforming two-family residence up until the most recent Certificate of Compliance expired in March 1999. On October 18, 1999 a building department staff member attempted to inspect the property, however, could not gain entry and returned January 25, 2000. The inspection report notes that neither unit was rented at the time. Since more than two years have passed since this property was registered as a two family dwelling, it has lost its nonconforming status and is now considered a legal, conforming single family residence. The zoning in the surrounding neighborhood is R-1 and land uses are single family residential. There is a detached two-car garage in the rear yard with an appropriately sized and paved driveway. The exterior of the home is consistent with other single-family residences nearby. It does not have the appearance of a two family structure. No records exist to substantiate that this home was originally built as anything other than a single-family dwelling. Use variances require a 2/3-majority vote of the membership of the Zoning Board of Appeals to be approved. Staff received the following comments: Mrs. Coleman, 782 Evanston is opposed to the request. Emmit Davis, 698 Catawba is opposed to the request. A tenant living at 723 Evanston stated that if the house is big enough and they could get good tenants, she wouldn't be opposed.

B. Larson asked if the home had been empty for the time since Housing couldn't get in and inspect. M. Cameron stated that the applicant would be best to answer this question. B. Delello stated that there are 3 entrances for the home. One of the entrances is for the upstairs and the other 2 were for the downstairs. The owner moved out this past July and the tenant who lived upstairs had to be evicted and moved out this past August. The owner didn't want to have any inspections or be made to make repairs to the home. The home is physically set up as a 2 unit. She didn't know if the home was originally constructed this way. There is an investor who is interested and made an offer on the home. The offer fell thru because it was found that it couldn't be used as a 2 unit. There is no access to the upstairs from the downstairs. Each of the units has 1 bedroom, a bath, kitchen, and living room. B. Larson asked if the investor had planned on living in 1 of the apartments while renting the other. B. Delello believed that the investor had planned on renting both of the units. R. Hilt asked if the Inspections department had any issues with it being used as a 2 unit. B. Delello stated that the units would need to be brought up to code before they could be rented. C. Kufta asked if this would have needed to be brought before the ZBA if the home had been occupied the entire time. M. Cameron stated that it would because the courts don't recognize rentals unless they have their Certificate of Occupancy, which this didn't. B. Larson asked if there had been any inspections. M. Cameron stated that there had been exterior inspections, but the owner wouldn't let the Inspectors in for an interior one. B. Delello stated that the interested investor had been in contact with Neighborhood Investment Corp. for the possibility of funding for rehabilitation and that a representative of theirs had been inside the structure. J. Clingman-Scott stated that she didn't know anything about this case until she got her packet in the mail so she didn't know if she would have a conflict for this or not. She didn't know if one of her employees is working with anyone on this or not.

A motion to close the public hearing was made by B. Larson, supported by J. Clingman-Scott and unanimously approved.

J. Clingman-Scott stated that she has no knowledge of any of her staff going to the property. There have been cases where the zoning had been changed in an area. She didn't see anything compelling in the request. B. Larson stated that there are mitigating circumstances and he would be willing to grant the request. C. Kufta stated that he didn't care for this kind of use variance, but there isn't anything that the bank could have done differently. The bank's creditor gave misinformation and this is why the case is before them now. The property had been used as 2 units and he would be willing to grant the request. E. Fordham stated that he wasn't against this but it would need to be brought up to code before it's used. He asked if it was okay to have 1 furnace and 1 hot water heater to service both units. M. Cameron stated that he couldn't speak on behalf of the Inspections Department. J. Clingman-Scott stated that single-family homes add more to the taxes than a multi-family, plus it would affect the surrounding properties. Single-family homes also add to the stability of a neighborhood.

A motion that the use variance to permit the property at 720 Hill Avenue to be used as a two-family residence in an R-1 Single Family Residential zone be approved, based on the following review standards (found in Section 2502 of the Zoning Ordinance) subject to conditions: a) That the property could not be used (put to a reasonable use) for the purposes permitted in that zone

district. b) That the plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions. c) That the proposed use would not alter the essential character of the area and will not materially impair the purposes of this ordinance or the public interest. d) That the alleged hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. e) That the alleged hardship is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. f) That the requested variance is the minimum action required to eliminate the hardship. g) That the use variance does not permit a use specifically identified by this Ordinance as a use excluded from the particular zone in which requested. h) The use does not seriously threaten the health of future residents or neighbors. i) The use is not a nuisance per se, or the use in that particular location does not constitute a nuisance. With the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) Four paved parking spaces shall be provided for tenant use. 3) The units are brought up to the current building codes, was made by B. Larson, supported by C. Kufta and approved with J. Clingman-Scott voting nay.

Hearing, Case 2005-002: Request for a 5.5 foot side setback variance to allow construction of an attached garage 2.5 feet from the side property line (rather than 8 feet as required by ordinance) in an R-1 Single Family Residential Zone at 1440 Lakeshore Drive, by Mike Regeczi Jr. M. Cameron presented the staff report. The subject property has an older one car detached garage in place on the same side as the new attached garage is proposed. The applicant's site plan indicates the proposed garage would occupy the same location as the existing garage, where the setback of the existing home is approximately 27.5 feet. The setback as measured to the wall on the opposite side of the home is roughly 44 feet. The zoning ordinance prohibits the construction of a new detached accessory building within six (6) feet of a dwelling; however, it does not address separation between structures on adjacent lots. The location of the neighboring home is not given on the site plan; any new construction will have obvious fire safety and building construction implications, regardless of the location of fire hydrants or local fire station, and will affect both the applicant and the adjacent homeowner. Staff has received two comments regarding this case. Gloria Carney of 1408 Palmer called and has no objections to the case. Gerry and Charol Shiffman e-mailed their response stating they would have no objections to the request on two conditions, first that they would like the opportunity to review the architectural design of the structure and secondly that the property owner completes the construction, trim and architectural detail on the front porch. Staff also received a phone call from Grant Meier of 1432 Lakeshore who had questions about the height and the impact of the view of the lake, but wasn't opposed to the request.

J. Clingman-Scott asked if the new garage would be built in the same foot print of what was there, but larger and extended toward the home. M. Cameron explained what the applicant would like to do based on the supplied site plan and conversations he has had with the applicant. B. Larson asked how the water would be retained on the property. M. Cameron stated that from discussions that he had with the applicant, the slope of the roof would be so the water would run to the rear of the property. M. Regeczi stated that the roof actually was sloped to the property line, but there would be a gutter running to the back of the property for the water runoff of the garage. B. Larson asked if the applicant was aware of Mr. Shiffman's response. M. Regeczi stated that he would be completing the construction, trim, and detail of the front porch. He has

also spoken with him.

A motion to close the public hearing was made by J. Clingman-Scott, supported by E. Fordham and unanimously approved.

B. Larson stated that this would improve the area. E. Fordham stated that this was a wise move from what is currently there.

A motion that the 5.5 foot side setback variance to permit an attached garage with a setback of only 2.5 feet be approved, based on the following review standards (found in Section 2502 of the Zoning Ordinance) and subject to conditions: a) That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. b) That such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. c) That the authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. d) That the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. e) That the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. f) That the requested variance is the minimum action required to eliminate the difficulty. With the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the additions to the property must be complete within one year (sec. 2504) or the variance is void. 3) The drainage would be contained on the property as described by the owner, was made by B. Larson, supported by J. Clingman-Scott and unanimously approved.

OTHER

Meeting Schedule – M. Cameron provided the commission members with a corrected meeting and deadline schedule.

There being no further business, the meeting was adjourned at 4:45 p.m.

hmg
1/11/05